

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|------------------|---|-----------------------------|
| ROBBINS, et al., |) | CIVIL ACTION NO. C-1-00 706 |
| |) | |
| Plaintiffs, |) | Judge Weber |
| |) | |
| v. |) | Magistrate Judge Hogan |
| MATTEL, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

AFFIDAVIT OF STEVEN VAUGHAN IN SUPPORT OF DEFENDANT'S
REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

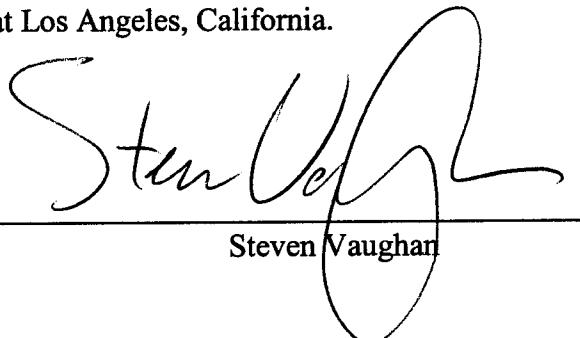
I, Steven Vaughan, declare as follows:

1. I am a member of the State Bar of California and am admitted to practice before this Court. I am an attorney at Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel of record for Defendant Mattel, Inc. ("Mattel"). I make this declaration of my personal knowledge and, if called and sworn as a witness, I could and would testify competently hereto.

2. Attached hereto as Exhibit A are further portions of the transcript of the Deposition of Joli Quentin Kansil taken on August 8, 2002 in this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of September at Los Angeles, California.



Steven Vaughan

CERTIFICATE OF SERVICE

I hereby certify that a copy of AFFIDAVIT OF STEVEN VAUGHAN IN SUPPORT OF DEFENDANT'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been served upon Bruce Tittel, Esq., Wood, Herron & Evans, 2700 Carew Tower, 441 Vine Street, Cincinnati, Ohio 45202, by regular U.S. mail on this the 9th day of September, 2003.



Sue A. Erhart

EXHIBIT A

6 ROBBINS, et al.,)
7 Plaintiffs,) Civil Action
8 vs.) No. C-1-00 706
9 MATTEL, INC.,)
10 Defendants.)

ORIGINAL

1 00:00 1 would be difficult to answer that question, but,
 2 generally, game rules have a certain format, and
 3 so I wouldn't call it a standard, but there is a
 4 certain format to game rules.

12:00:14 5 Q. And what format is that?

6 A. Well, usually there'll be an
 7 introductory paragraph called a preamble, telling
 8 about the game, and that might include the object
 9 of the game. You know, just a quick run through
 12:00:2810 about what the game is all about. And then
 11 you'll have the equipment provided for the game,
 12 how many players, and then you'll usually have a
 13 question called preliminaries, that is, setting
 14 up the game with the tokens and the pieces or how
 12:00:4615 you put the cards on the table to start with and
 16 so forth.

17 Then you'll actually have the formal
 18 game rules, that is, how the game is played. And
 19 then afterward you will have, generally, variance
 12:01:0220 of the game, and then before that you might even
 21 have the scoring if the game has a scoring. Then
 22 there'll be variance, and then an optional
 23 section is strategy of the game.

24 Q. So the record is clear, what you just

AMM

1 01:26 1 described is the typical basic format that is
2 used in written game instructions?

3 A. Yes. In many written game
4 instructions.

12:01:42 5 Q. And this format that you have
6 described was something that was used as the
7 format for written game rules prior to 1971?

8 A. Yes. Certainly.

9 Q. And you would consider this to be the
12:01:5810 stock format that's used for written game
11 instructions?

12 A. That's right.

13 Q. Do you have an understanding as to why
14 in this stock format for written instructions
12:02:1615 that you've described these particular aspects of
16 the instructions are laid out in this particular
17 order?

18 A. Yes. It would make the most sense
19 sequentially. You open up a game, you want to
20 know a little bit about what it's about, so that
21 would be the preamble. You want to know how to
22 set up the pieces, that would be the
23 preliminaries. As a formality, they will mention
24 the number of players and equipment. And then

AMM

1 02:40 1 you want to know how to play the game and you
 2 deal with the scoring. That would be the next
 3 thing because the scoring is done after the game
 4 is played or after a particular hand is played.

12:02:50 5 And then variance and strategy and whatnot is
 6 extra material that may or may not be included at
 7 the end. So, sequentially, that would be the
 8 most sensible way to teach a game.

9 Q. And you'll agree with me that if
 12:03:0010 written instructions deviate too substantially
 11 from this stock format that you've described,
 12 that you run the risk of confusing the readers?

13 A. Yes. If it's not done sequentially,
 14 you certainly could.

12:03:1615 Q. And that's your -- that your view as
 16 an expert, isn't it?

17 A. Yes.

18 Q. If I understood your prior testimony
 19 correctly, in comparing the 1971 UNO game with
 12:03:4420 the 1999 UNO game, what you essentially did was
 21 read those written instructions and just compared
 22 them; is that right?

23 A. Yes. Read them, made notes and then
 24 went back over the notes and saw, number one, how

AMM

6 :30:14 1 same or virtually identically to any sentence in
2 the 1971 instructions?

3 A. I'd have to look at both and it would
4 be -- you know, it would be -- the evidence would
02:30:24 5 be right there. I'm quite sure there are, but I
6 don't want to go on record. I'd have to look at
7 both sets of rules again carefully.

8 I didn't really -- my task, I thought,
9 was to compare the instructions as far as rule
02:30:4210 changes and how original the 1999 version was
11 compared to the 1971 version, not do a paragraph
12 by paragraph analysis as to how much of the rules
13 were exactly the same, you know, word by word.

14 Because I believe the 1999 rules were recast, so

02:31:0615 I don't know how many of the paragraphs would be
16 exactly the same. In fact, my opinion would

17 probably be not all that many, though the
18 rules -- how to play the game are the same, but,
19 basically, the, you know, paragraph by paragraph

02:31:2020 analysis, the '99 rules have been over -- not

21 overhauled, but they have been rewritten so

22 that -- for clarity purposes.

23 Q. They were reworded?

24 A. Reworded, yes.

AMM

02:34:32 1 particular color and a particular number. So,
2 basically, the overall rule is that you either
3 match color or number when it's your turn to
4 play.

02:34:44 5 Q. Is it fair to say that the colors and
6 numbers serve the function of allowing players to
7 match colors and numbers?

8 A. Yes. To match colors and numbers,
9 that's right. Colors or numbers, yeah.

02:35:0010 Q. So you'll agree that the words used
11 here in the 1971 instructions about colors and
12 numbers is just to describe the function of those
13 colors and numbers; is that correct?

14 A. That's right.

02:35:1615 Q. You'll see further down on Exhibit 18,
16 the paragraph that says, quote, "if you match the
17 color and card you play has 'Skip' marked on it,
18 the next player is skipped for that round," end
19 quote?

02:35:3420 A. Yes, I do.

21 Q. You'll agree that the use of the word
22 "skip" here in the 1971 instructions just
23 describes the function of the Skip card, correct?

24 A. Right.

AMM

1 :35:44 1 Q. And that function is to skip over the
2 next player?

3 A. Yes.

4 Q. And you'll agree that the use of the
02:35:52 5 word "skip" on the Skip card itself is just to
6 describe the function of that particular card,
7 right?

8 A. Right.

9 Q. In the next paragraph of the 1971
02:36:0410 instructions, which we have marked as Exhibit 18,
11 you'll see the language that says, quote, "if you
12 match the color and the card you play has
13 'Reverse' marked on it, the play is reversed and
14 the player to your right plays and the play
02:36:2015 continues to the right of the dealer until
16 someone plays another 'Reverse' card which then
17 changes the direction of play again," end quote?

18 A. Yes.

19 Q. You'll agree that the use of the word
02:36:3220 "Reverse" here in the 1971 instructions just
21 describes the function of the Reverse card,
22 correct?

23 A. That's correct.

24 Q. That function is to reverse the

AMM

02:36:42 1 direction of play?

2 A. Right.

3 Q. And you'll agree that the use of the
4 word "Reverse" on the Reverse card itself is just
02:36:48 5 to describe the function of that particular card?

6 A. That's right.

7 Q. In the next paragraph, of the 1971
8 instructions, which we have marked as Exhibit 18,
9 you'll see the language that says, quote, "if you
02:37:06 10 match the color and play a card with 'Draw two'
11 marked on it, the next player must draw 2 cards
12 and forfeit his" hand "for that round," end
13 quote?

14 A. "Forfeit his play for that round,"
02:37:20 15 yes.

16 Q. You'll agree that the use of the words
17 "draw two" here in the 1971 instructions
18 describes -- just describes the function of the
19 Draw 2 card, correct?

02:37:30 20 A. That's right.

21 Q. And that function is to have the
22 player draw two cards?

23 A. That's correct.

24 Q. And you'll agree that the use of the

AMM

0 :37:42 1 words "draw two" on the Draw 2 card itself is
2 just to describe the function of that particular
3 card?

4 A. That's correct.

02:37:56 5 Q. In the next paragraph of the 1971
6 instructions, which we have marked as Exhibit 18,
7 you see the paragraph, it says, quote, "how to
8 play wild cards"?

9 A. Yes, I do.

02:38:1010 Q. And that text says, quote, "the cards
11 marked 'Wild' can be played at anytime on any
12 color or on any number and when you play it you
13 can call the color that you want," end quote?

14 A. Yes.

02:38:2215 Q. You'll agree with me that the use of
16 the word "wild" here in the 1971 instructions
17 just describes the function of the Wild card,
18 correct?

19 A. Right.

02:38:3620 Q. And that function is to allow any card
21 to be played when there's a Wild card?

22 A. That's right.

23 Q. And you'll also agree with me that the
24 use of the word "wild" on the Wild cards

AMM

6 :38:46 1 themselves in the 1971 game is just to describe
2 the function of that card?

3 A. Yes.

4 Q. In the next paragraph of the 1971
02:39:00 5 instructions, which we have marked as Exhibit 18,
6 you see the language where it says, quote, "there
7 is another Wild card marked 'Draw 4,'" end quote,
8 and then continues on?

9 A. Yes.

02:39:1010 Q. You'll agree me that the words "Draw
11 4" here in the 1971 instructions just describes
12 the function of the Draw 4 card, correct?

13 A. Right.

14 Q. And that function is to draw four
02:39:2615 cards?

16 A. That's right.

17 Q. And you'll agree with me that the use
18 of the words "Draw 4" on the Draw 4 cards
19 themselves is just to describe the function of
02:39:3820 those particular cards, correct?

21 A. Right.

22 Q. If you could please turn to Exhibit 2,
23 which is your report.

24 A. Yes.

AMM

1 :40:02 1 Q. I would like to direct your attention
2 to page 7.

3 A. All right.

4 Q. In the first full paragraph on page 7,
02:40:16 5 you conclude in your report, quote, "in summary,
6 any adult player -- or even a consumer as young
7 as 12 years old -- would find that the 1999 UNO
8 instructions are substantially similar to the
9 1971 instructions," end quote.

02:40:2810 Do you see that language?

11 A. Yes, I see that, indeed.

12 Q. What do you mean by "substantially
13 similar" here?

14 A. The two games, the 1999 version and
02:40:3815 the 1971 version, are basically the same card
16 game. UNO had spectacular sales throughout the
17 years, and, you know, I -- there simply -- there
18 was no reason to make wholesale changes in the
19 game and so when the 1999 version came out, there
02:40:5820 were a few changes, which I have talked about,
21 but, basically, the instructions are
22 substantially similar. I mean, the wording may
23 be different, it's been reworded, the '99
24 version, but the instructions, that is, how to

AMM

02:46:00 1 1971 instructions.

02:46:08 2 A. Well, an easier way would be to just
3 tell you the few ways where there are differences
4 and then every other thing would be the same. So
02:46:26 5 that's what -- substantially similar, I mean, we
6 could go over every rule of the game and, you
7 know, 95 percent of them would be the same. So
8 it might be easier to just tell you, you know,
9 the few differences that are present in the two
02:46:40 10 versions.

11 Q. Well, that's not quite my question.
12 You've already told me that when you
13 say here in this sentence, quote, "would find
14 that the 1999 UNO instructions are substantially
02:46:40 15 similar to the 1971 instructions," end quote,
16 that you're referring to the 1999 UNO game and
17 the 1971 UNO game.

18 A. Yes. The play system, right.

19 Q. Other than with respect to the play
02:46:54 20 system as you've described it, are there any
21 other ways in which the 1999 UNO instructions are
22 substantially similar to the 1971 instructions?

23 A. Yes. In the format of the rules, the
24 sequential presentation of both versions. '71

AMM

0:47:18 1 and '99, the order of play, you know, the order
2 of explanation is quite similar. In other words,
3 how the rules are organized, even though the
4 wording is different, how the rules are organized
02:47:34 5 it quite similar.

6 Q. In your view, both the 1971
7 instructions and the 1999 instructions generally
8 follow the stock format for instructions you
9 described earlier today, correct?

02:47:54 10 A. Not really, because -- well, to some
11 degree. I beg your pardon. To some degree they
12 do in that you have the object of the game, you
13 know, the equipment that's used and a brief
14 summary of the game. The brief summary of the
02:48:10 15 game in the stock format that I gave was usually
16 at the given at the top, but here it's the third
17 item in the '99 rules. And then you have your
18 preliminary, choosing the dealer and so forth.
19 So in many respects that is the case. Then you
02:48:24 20 have your play followed by the scoring and
21 penalties and variance.

22 So to some degree it does. No
23 question about it. Especially the '99 version,
24 but even the '71 version as well.

AMM

1 Q. And so the record is clear, you agree
 2 that just generally speaking, both the 1971
 3 instructions and the 1999 instructions more often
 4 than not follow the stock format for instructions
 02:48:54 5 that you described --

6 A. Yes.

7 Q. -- earlier today?

8 A. That's right. Because they both give
 9 of the game sequentially, you know, in the order
 02:49:0010 that the rules would follow for play, and even in
 11 how the rules are organized, as I mentioned.

12 Q. Now, other than with respect to their
 13 similarities regarding the system of play and the
 14 format of the rules that you have discussed, are
 02:49:3015 there any other ways in which the 1999 UNO
 16 instructions are substantially similar to the
 17 1971 instructions, in your view?

18 A. Yes. In that, you know, the cards --
 19 the card breakdown is listed in one and it's
 02:49:4220 listed on the other set as well. And also the
 21 scoring and counting, that's also listed line by
 22 line pretty much in the same format. So those
 23 two -- that factor would also be very much the
 24 same.

AMM

0 :50:00 1 Q. You'll agree that those sections, when
2 comparing the '71 instructions to the '99
3 instructions, do not use exactly the same
4 wording, correct?

02:50:12 5 A. They don't use exactly the same
6 wording, no.

7 Q. And you see differences in the wording
8 between those instructions --

9 A. Yes, I do.

02:50:20 10 Q. -- with respect to those sections?

11 A. Yes, small differences.

12 Q. Well, can you point to me in those
13 sections any language or any sentence that is
14 identical or virtually identical?

02:50:54 15 A. No, that's not exactly identical.
16 Let's see.

17 Yes. I think in the scoring, counting
18 and scoring, you have "all cards 0 through 9" and
19 then "all cards through 9." "The Draw 2 cards"
02:51:12 20 and just "Draw 2" and "Reverse cards" just
21 "Reverse." I mean, these are not exactly --
22 exact the same word for word, but, you know.
23 It's basically essentially certainly the same
24 except not word by word. You have 20 points, 20

AMM

0 :51:30 1 points, 20 points, and 20 points, 50 points.
2 There was one change there and 50 points, 50
3 points. So some of the words are exactly the
4 same, especially where they are giving scoring
02:51:44 5 numbers.

6 Q. Any other aspects between the 1971
7 instructions and the 1999 instructions that
8 you're referring to when you say that they are
9 substantially similar, other than what you have
02:52:0010 told me about so far in your deposition?

11 A. Well, let me just take a look here.
12 No, I can't see any -- I can't see any others.
13 It appears that the 1999 version, while the rules
14 are more than 95 percent the same, the rules --
02:52:2415 they have been, you know, totally redrafted or
16 reworded for clarity and so that it -- so that
17 the style is slightly -- is different from the
18 '71 version and whatnot. It is just a more
19 professional set of rules.

02:52:5220 Q. Just so I have, then, your complete
21 testimony on this particular issue, in your view,
22 when comparing the 1999 and the 1971
23 instructions, that they are substantially similar
24 to one another in what you have said was the

AMM

02:53:10 1 format of the rules, the system of play, and then
2 the various kinds of card breakdowns that you
3 discussed?

4 A. Yes. Yeah.

02:53:20 5 Q. Now, in your view, are the 1999
6 instructions and the 1971 instructions
7 substantially similar to one another in any other
8 respects that you haven't told me about or do I
9 have your complete testimony on it?

02:53:3610 A. Well, both are complete accounts of
11 how to play the game, and since the rules are
12 very much the same, reading through each set of
13 rules sounds similar, though the words in
14 virtually each paragraph have been recast.

02:54:0215 Q. Are there any other ways in which, in
16 your opinion, the 1971 and the 1999 instructions
17 are substantially similar?

18 A. I would have to take quite a bit of
19 time on that because, remember, I prepared my
02:54:1820 report from the standpoint of rule changes and
21 comparing the two sets of rules from that
22 standpoint rather than wording, you know, per
23 paragraph. I could have very well have done
24 that, but I didn't think that was part of my --

AMM

02:57:26 1

A. Yes.

02:57:34 5

Q. And my only question now is are there any additional ways in which you believe that they are substantially similar that you haven't discussed here today, or do I have your complete testimony?

02:58:0010

A. You have my complete testimony.

02:58:1815

Q. If you could please turn to page 10 of your expert report, which we have marked as Exhibit 2.

11

A. All right.

12

Q. Do you see the language where you say, quote, "the conclusion is that all of these editions are similar to the original UNO game published in 1971," end quote. Do you see that language?

17

A. Yes.

18

Q. What do you mean by "similar" here?

19

A. I mean in the play system and whatnot, not in the exact wording of the rules. So that should be clarified.

22

But, basically, the games play similar to '71 and '99. There's just been a couple of extra cards added in some of the addition --

AMM

0 :15:58 1

A. All right.

2 Q. My question is simply, you'll agree
3 with me that -- well, I can even back up
4 further.

5 A. Okay.

6 Q. You'll agree with me that you are not
7 an expert and don't know about every single game
8 that was played in 1971?

9 A. That's certainly true.

03:16:1610

11 Q. And you don't have any reason to
12 believe that the idea of having 112 cards as part
13 of a game is unique, right, as of 1971?

14 A. Well, I simply know that it was not
unique as it turns out.

03:16:3015

Q. And you don't disagree with that?

16 A. It was not unique having 112 cards,
17 that's correct.

18 Q. Turning to page 3 of your report --

19 A. All right.

03:16:4220

21 Q. -- you say, quote, "thus, using colors
22 for suits instead of symbols is not a unique
23 feature of UNO," end quote?

24 A. That's right.

Q. And that was true as of 1971, right?

AMM

16:54 1

A. Yes. Because of the card game Rook.

2

Q. In the next paragraph you say, quote,
"the fact that the game has a range of numbers
that utilize low integers is not original," end
quote?

03:17:16 5

A. Now that I need to find out where
you're indicating here just so I understand.

8

Q. I'm referring to the last portion of
the first full paragraph on the page.

03:17:24 10

A. Right. I got it. The fact that the
game has a range of numbers that utilize low
integers is not unique. Yes, that's so because,
again, because of the game of Rook.

14

Q. And that's a true statement?

03:17:38 15

A. Yeah.

16

Q. And that's a true statement as of
1971?

18

A. Correct.

19

Q. In the next paragraph you say, quote,
"the scoring in UNO was not innovative either,"
end quote?

21

A. Right.

23

Q. And that's a true statement?

24

A. That's my expert opinion.

AMM

03:18:00 1 Q. And that was true as of 1971; is that
2 correct?

3 A. Right.

4 Q. Directing your attention to the next
03:18:26 5 paragraph of your report, which is Exhibit 2, you
6 say, quote, "what is unique about the composition
7 of the UNO deck and its play, are some, but not
8 all, of the 'Word' cards in the game," end quote?

9 A. Right.

03:18:3810 Q. And then you go on to describe five
11 different word cards?

12 A. Yes.

13 Q. What are you referring to when you
14 say, quote, "the composition of the UNO deck,"
03:18:5015 end quote?

16 A. We are talking about the entire UNO
17 deck of 112 cards, all of the numbered cards in
18 the deck as well as the word cards. You add them
19 all up and they comprise the UNO deck.

03:19:1020 Q. You'll agree with me that the
21 composition of the UNO deck is functional in that
22 it allows people to play the game?

23 A. Yes, surely.

24 Q. And in that same sentence where you

AMM

1 here.

2 MR. ZELLER: He has four minutes.

3 THE WITNESS: Sorry about that.

4 MR. ZELLER: But we should probably take a
03:23:12 5 break.

6 THE WITNESS: It's up to you. I'm fine.

7 MR. ZELLER: Let's take a few minutes.

8 THE WITNESS: Do you want to stop now then?

9 MR. ZELLER: Yes. This is just as
03:23:2010 convenient as anywhere else.

11 THE WITNESS: Okay. Thank you.

12 THE VIDEOGRAPHER: Going off the video
13 record at the end of tape number two at 3:23
14 p.m.

03:33:2815 (WHEREUPON, a recess was had.)

16 THE VIDEOGRAPHER: Going back on the video
17 record at the beginning of tape number three at
18 3:33 p.m.

19 BY MR. ZELLER:

03:33:5020 Q. Turning to page 4 of your report --

21 A. Yes.

22 Q. -- which we have marked as Exhibit 2 --

23 A. Yes.

24 Q. -- in the middle of the second

AMM

1 paragraph on that page, you say, quote, "this
2 writer has observed that in almost all extremely
3 popular and successful games, there is often one
4 key rule or feature that 'makes' the game. In
03:34:14 5 UNO it is the 'Reverse' card," end quote.

6 First, when you're referring to the
7 rule or feature here, you're referring to some
8 aspect of the system of play?

9 A. Right.

03:34:2810 Q. And you go on to say, "in UNO, it is
11 the 'Reverse' card."

12 You'll agree with me that you don't
13 have any empirical evidence or any data or hard
14 evidence to establish that it is the Reverse card
03:34:4215 that has caused any UNO product to be
16 commercially successful, right?

17 A. No, that is correct. It is just my
18 expert opinion.

19 Q. Well, that's what I am trying to
03:34:5620 figure out.

21 You go on later to say "it is purely
22 speculation, but without the unique 'Reverse'
23 rule," and then continue on.

24 You'll agree with me that when you say

AMM

6 :35:06 1 that the key rule or feature that has made UNO or
2 any UNO product commercially successful is the
3 Reverse card, that you're speculating, correct?

4 A. Yes. I said, in fact, it is purely
03:35:24 5 speculation. I did even point that out in that
6 sentence.

7 Q. And it is equally speculation when you
8 say that this rule or feature that makes the game
9 with respect to UNO is the Reverse card?

03:35:3810 A. Speculation?

11 Q. Right.

12 A. It's opinion. Speculation is saying
13 something, you know, a little wild sometimes.

14 But if it is just my expert opinion, you know,

03:35:5415 because of 30 years in this business inventing my

16 own games and dealing with other games, writing
17 rules and whatnot, that a good deal of the time
18 one rule will make or break the game and make it

19 really popular. And I said it's speculative, but
03:36:0820 I felt that the reverse rule fit into this

21 category.

22 Q. Right. And I think we're on the same
23 wavelength, but let me make sure.

24 A. Okay.

AMM

1 :36:18 1 Q. I'm not asking you about your general
2 opinion, that there's some, you know, particular
3 rule or feature of games in general --

4 A. Yes.

03:36:28 5 Q. -- that tend to make a game popular?

6 A. All right.

7 Q. What I'm focusing in on is the various
8 UNO games that have been marketed and sold.

9 And you'll agree with me that you are
03:36:4210 speculating when you say it is the Reverse card
11 in particular that has made any UNO game or
12 product a commercially successful one, right?

13 A. Yes. More than any other rule, I feel
14 the reverse rule, indeed, is the one that way.
03:36:5415 That's right. And I do specify that it is
16 speculation.

17 Q. You don't have any empirical data or
18 any hard evidence concerning what it is that
19 consumers find to be attractive about the system
03:37:2220 or pattern of play of any UNO game or product,
21 right?

22 A. That's right.

23 MR. ZELLER: Let's go off the record for a
24 minute.

AMM

6 55:28 1 changes to the game," end quote?

2 A. That's right.

3 Q. And, again, you are referring here to
4 the system or method of playing the game itself
03:55:36 5 as opposed to the written instructions, right?

6 A. Right.

7 Q. In the next sentence you say, quote,
8 "UNO has always been simple and enjoyable to
9 play and" never -- "really never has needed
03:55:5010 improvement through any major modifications," end
11 quote?

12 A. Yes.

13 Q. And, again, you are not referring to
14 the particular written instructions, but rather
03:55:5815 the overall system or method of playing UNO
16 games?

17 A. Yes, but I would add that by the time
18 1999 rolled around, the '71 instructions were due
19 for a bit of a facelift insofar as wording and
03:56:1620 whatnot and organization and that's what was done
21 in 1999. So I concur completely with what they
22 did.

23 Q. What's your basis for saying that the
24 1971 instructions -- I'm sorry.

AMM

42:30 1 find it out, but I'd have to spend a lot of time.

2 Q. And I think we're agreed that that
3 issue as to when these games were first played is
4 something of fact rather than opinion for an
04:42:40 5 expert?

6 A. That's right. And that's is in this
7 case. Indefinitely.

8 Q. There were other card games in
9 addition to "I Doubt It" and "Go Fish" that were
04:43:10 10 played prior to 1971 in which the player had to
11 yell something out during the course of play?

12 A. Yes.

13 Q. And that would include games like
14 "Snap" and "Spit"?

04:43:24 15 A. Yes, yes. Snap, I now recall, yes.

16 Q. And, in your view, there's nothing
17 terribly unique about the feature of the 1971 UNO
18 game and having callers -- having players call
19 out particular words, right?

04:43:40 20 A. Not call out particular words, but in
21 the UNO sense having them call out when they have
22 exactly one card left, that I -- that seems to be
23 unique from all of the card game reviews that
24 I've had.

AMM

10:50 1 sets of instructions you prepared?

2 A. Well, in my card -- in my card games
 3 book there's probably 40 games or so that are
 4 really new where I totally overhauled the rules,
 05:11:06 5 so certainly those rules.

6 Then rules of my own card games, some
 7 of which are not in this book, that would
 8 probably be another ten or twelve sets of rules.

9 And then helping other inventors who
 05:11:2010 came up with games, but couldn't write rules
 11 because they certainly didn't know how to -- you
 12 know. It takes a little bit of talent to write
 13 game rules. It's like trying to write an article
 14 on how to tie your shoes. Most people couldn't
 05:11:3215 write such a thing.

16 So I was able to write rules almost
 17 from scratch from just, you know, ideas for an
 18 outline and whatnot of somebody showing me their
 19 new product and they would pay me to put rules
 05:11:4820 together. So, certainly, I have written rules
 21 for -- see, I don't know, a minimum of 30 games
 22 and maybe up to 60, including games that are
 23 already known, not my own games.

24 Q. Did your experience in the writing of

AMM

1 BY MR. LUKEN:

2 Q. You can answer if you know.

3 A. On all substantial respects are the
4 games played identically? No, there are some
05:16:52 5 differences.

6 Q. Okay. Can you explain the
7 differences?

8 A. The difference is in scoring. The --
9 one of the -- one of the word card scores is 50
05:17:0410 rather than 20 in the '99 version, and also the
11 cards count their individual face values, such as
12 a deuce counting 2 and an 8 counting 8, whereas
13 in the '71 version the cards count five no matter
14 what.

05:17:1615 Also, in the '99 version, a player
16 failing to yell UNO at the appropriate time has
17 to take a penalty of two cards rather than one.
18 That's in the '99 version as opposed to the '71
19 version.

05:17:3020 So those are the main differences.

21 Q. So with the exception of the scoring
22 change from the '71 to the '99 version --

23 A. And the UNO.

24 Q. -- and the UNO penalty, between -- the

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

4 ROBBINS, et al.,)
5 Plaintiffs,) Civil Action
6 vs.) No. C-1-00 706
7 MATTEL, INC.,)
8 Defendants.)

9 I hereby certify that I have read the
10 foregoing transcript of my deposition given at
11 the time and place aforesaid, consisting of Pages
12 1 to 319, inclusive, and I do again subscribe and
13 make oath that the same is a true, correct and
14 complete transcript of my deposition so given as
15 aforesaid, and includes changes, if any, so made
16 by me.

18 JOLI QUENTIN KANSII

19 SUBSCRIBED AND SWORN TO

20 before me this day

22

23

24

24 Notary Public

AMM



LINKING TESTIMONY, TRADITION AND TECHNOLOGY

1 STATE OF ILLINOIS)

2)

3 COUNTY OF L A K E)

4 I, ANNETTE M. MONTALVO, a Notary
5 Public within and for the County of Lake, State
6 of Illinois, and a Certified Shorthand Reporter
7 of said state, do hereby certify:

8 That previous to the commencement of
9 the examination of the witness, the witness was
10 duly sworn to testify the whole truth concerning
11 the matters herein;

12 That the foregoing deposition
13 transcript was reported stenographically by me,
14 was thereafter reduced to typewriting under my
15 personal direction and constitutes a true record
16 of the testimony given and the proceedings had;

17 That the said deposition was taken
18 before me at the time and plays specified;

19 That the reading and signing by the
20 witness of the deposition transcript was agreed
21 upon as stated herein;

22 That I am not a relative or employee
23 or attorney or counsel, nor a relative or
24 employee of such attorney or counsel for any of

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1 the parties hereto, nor interested directly or
2 indirectly in the outcome of this action.

3 IN WITNESS WHEREOF, I do hereunto set
4 my hand and affix my seal of office at Chicago,
5 Illinois, this 12th day of August, 2002.

6

7

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9

Annette M. Montalvo

10 Notary Public, Lake County, Illinois.

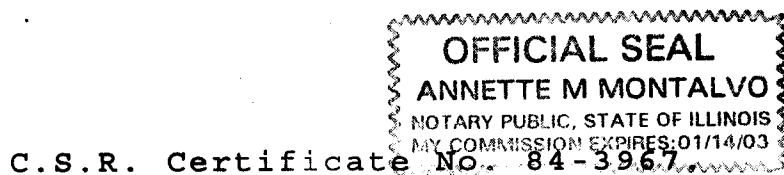
11 My commission expires 1/14/03.

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